

HIGH COURT OF CHHATTISGARH: BILASPUR
S.B. HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J
WRIT PETITION (c) 16 OF 2007

Petitioner :

M/s Maruti Clean Coal and Power Limited A company incorporated under the companies act, 1956, having its registered Office at G-9 Hira Arcade, Pandri, Raipur (CG).
(Defendant No.2)

Versus

Respondents

- 1 State of Chhattisgarh through the Collector, Korba. (Defendant No.1).
- 2 South Eastern Coal Fields Limited, a Govt. Company Incorporated Under the Companies Act, 1956 Having its Registered Office at Seepat Road, Bilaspur, (Plaintiff).

PRESENT:

Shri BP Sharma with Shri K Mehra, counsel for the petitioner.

Shri Prashant Mishra, Addl. Adv. General for respondent No.1/State.

Shri HB Agrawal, Senior Advocate with Shri OP Agrawal, and Shri AK Sinha, Counsel for respondent No.2.

ORDER

(Passed on 8th February, 2007)

This petition under Article 227 of the Constitution India has been filed for following reliefs :

- 1) A writ of and/or in the nature of certiorari do issue quashing the impugned order dated 07.12.2006 passed by the Court of Civil Judge Class - II, Katghora purporting to allow the application for amendment being IA No.20 filed by the Respondent No.2 in Civil Suit No.90 A of 2004 in the case titled South Eastern Coalfields Limited Vs State of Chhattisgarh and another.
- 2) A writ of and / or in the nature of Mandamus do issue directing the Court of Civil Judge - Class - II Katghora

to return the plaint of Civil Suit No.90A of 2004 along with the application for amendment [IA No.20] for being presented before the competent Civil Court in accordance with order 7 Rule 10 CPC.

- 3) Any other order or direction in the nature of writ or otherwise, as may be considered fit appropriate and proper by the Hon'ble Court while exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

2) Factual matrix of the case, in brief, is that respondent No.2 instituted a Civil Suit bearing No.90 A/2004 against respondent No.1 and petitioner for declaration of title and permanent injunction. During the pendency of the suit, opposite party vehemently opposed the suit instituted by respondent No.2 on the ground that suit for declaration simplicitor is not maintainable as suit land has been leased out by respondent No.1 to the petitioner and the petitioner is in possession over it. It appears that in order to meet the objection, plaintiff filed an application for amendment seeking relief of possession and facts regarding valuation of the suit for the purpose of jurisdiction and court fee. The application was opposed by the petitioner and respondent No.1.

3) Learned trial Court after due hearing held that objection raised by the other party regarding absence of relief for cancellation of lease deed and valuation ousting its jurisdiction, is not required to be adjudicated at the stage of consideration of application for amendment. The objections raised are subject to decision after framing necessary issues. The amendment neither changes the nature of the suit nor is causing any loss to respondent No.1 or the

petitioner. Accordingly, keeping the disputes open, he allowed the amendment application and also afforded opportunity to respondent No.1 and petitioner for consequential amendment.

4) Admittedly, respondent No.2 is claiming title over the suit land and earlier his relief was declaration simplicitor, but subsequently when objection came, plaintiff in order to seek relief of possession filed application for amendment. Undisputedly, the suit is at its preliminary stage. Section 34 of the Specific Relief Act, 1963 (henceforth "the Act") provides that if plaintiff did not ask for further relief required in the suit, simple declaration can not be granted to him. Equity demands that if plaintiff in the garb of apprehension of dispossession files suit for declaration and Court finds that without seeking relief for possession, declaration simplicitor can not be granted. In that case, it is the duty of the Court not to throw out the suit, but, shall call upon the plaintiff, to make necessary steps for it. Here in the instant case, without intervention of the Court, plaintiff himself in order to avoid such contingency, made application for amendment.

5) Order VI Rule 17 of the Code of Civil Procedure (henceforth "the CPC") reads as below :

"17. Amendment of pleadings. -- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of

determining the real questions in controversy between the parties :

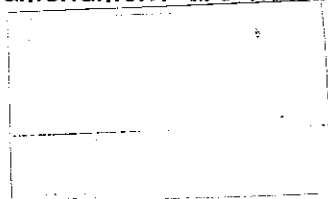
Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."

6) Otherwise then the exception made under the proviso, at any stage parties are permitted to make amendment on such term, as may be just, if the proposed amendment is necessary for the purpose of determining the real question in controversy between the parties. In view of the plaint averment, the suit may fail in absence of relief of possession, therefore, in the interest of justice amendment being necessary was required to be allowed.

7) So far relief in accordance with Section 31 of the Act is concerned, learned trial Court has also considered the same. It has also considered the jurisdictional aspect and valuation. But trial Court kept open the dispute for decision after consequential amendment.

8) Hon'ble the Apex Court while rendering judgment in the matter of Rajesh Kumar Aggarwal and others Vs KK Modi and others¹, in para 29 has observed thus :

"29. Since the Court has entered into a discussion into the correctness or falsity of the case in the amendment, we have no other option but to interfere with the order passed by the High Court. Since it is settled law that the merits of the amendment sought to be incorporated by way of amendment are not to



be adjudged at the stage of allowing prayer for amendment, the order passed by the High Court is not sustainable in law as observed by this Court in Sampath Kumar Vs Ayyakannu and another (2002) 7 SCC 559."

9) Herein the instant case, learned trial court has kept open the dispute regarding valuation of suit for jurisdiction and court fees as also other objections regarding relief of cancellation of lease deed. Learned trial Court in view of the judgment rendered in Rajesh Kumar (supra) did not commit such illegality or irregularity, which may call for interference by this Court to step in under Article 227 of the Constitution of India.

10) In the result, the impugned order passed by learned Civil Judge Class II Katghora is sustained. Further, learned trial Court is directed to frame preliminary issues regarding jurisdiction, court fee and other issues of law which emerge on the pleading of both the parties and to determine the same. In case the suit does not fall within his pecuniary jurisdiction, he may proceed in accordance with Order VII Rule 10/10-A of the CPC or other provisions of law.

11) WP No.16/2007 stands dismissed. No costs.

Sd/-
V.K.Shrivastava
Judge